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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,527	12/05/2003	Greg Spooner	ALTU-210	8283
28584	7590	04/22/2005	EXAMINER	
STALLMAN & POLLOCK LLP SUITE 2200 353 SACRAMENTO STREET SAN FRANCISCO, CA 94111			JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/728,527

Applicant(s)

SPOONER ET AL.

Examiner

Henry M Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed April 8, 2005 have been fully considered but they are not persuasive. Intended use and functional language that do not impact the structure of an apparatus are not significant in the determination of patentability. Positioning a device over a particular area of tissue is intended use. Operating a controller based on tissue color without a structural means for such determination implies such determination could be accomplished manually and the controller activated based on the manually acquired information.

DETAILED ACTION

Drawings

Informal drawings are acceptable for examination. Formal drawings will be required prior to issue.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

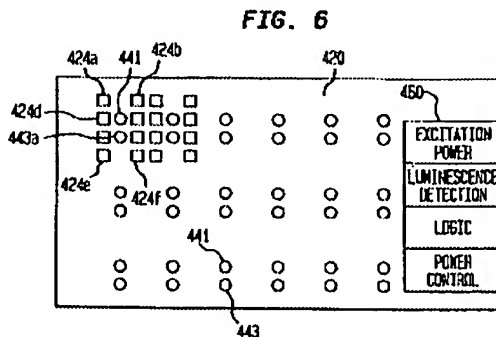
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,944,748 to Mager et al. Mager et al. teach a device for applying light in a pattern corresponding to the configuration of the lesion to be treated. The device may include sensors for detecting a characteristic of tissue overlying each region of the device so that the device either emits light or does not emit light in each region depending upon the characteristics of the

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overlying tissue (abstract). LEDs are used for treatment and arranged in an array (Fig. 6, # 424). Within groups of LEDs is an illumination source (Fig. 6, # 441) and a photodetector (Fig. 6, # 443). Logic is provided to illuminate the tissue and detect the reflected light to determine skin colorization (pigment or melanin), and based on the color, the corresponding LEDs are controlled to insure the proper area is treated. The logic unit associated with controller (Fig. 6, # 460) determines



whether the luminescence observed by each photocell is above or below a pre-selected threshold. If the luminescence observed by a particular photocell 443 is above the threshold, the logic unit instructs the power control unit to illuminate the treating LEDs 424 in the group surrounding that particular photocell. Otherwise, the logic and power control units prevent illumination of that particular group of photocells (Col. 15, lines 55-67). The photocells detect light; whether from reflection, luminescence or fluorescence. The characteristics of the treated tissue do not impact the device structure. Each of the groupings of LEDs is interpreted as a sub-area. The method of use is disclosed as positioning the device over the tissue to be treated and selectively illuminating the treatment light sources based on received light from the tissue.

Claims 1, 2, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,063,108 to Salansky et al. Salansky et al. disclose an apparatus for treating biological tissue with light using a matrix of LEDs that may be selectively activated (Figs. 11a- 11f). The various activation "sets" are interpreted as regions. The on and off states as shown in the figures are different intensities and a microprocessor is disclosed for controlling the optical parameters including optical power, dose and intensity, frequency, modulation frequency and phase of stimulation (Col. 3, lines 53-56). Salansky et al. further teach means for monitoring the

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condition of the mammal and providing feedback to the central microprocessor to adjust the selected optical parameter protocol (Col. 3, lines 59-61) and a phototransistor for detecting optical radiation (Col. 22, line 57) and providing feedback to the controller.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Primary Examiner
Art Unit 3739